CERTIFICATE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

No. 790

THOMAS C. EDWARDS

vs.

THE UNITED STATES

ON CERTIFICATE FROM THE COURT OF CLAIMS

FILED MARCH 11, 1932

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1 In Court of Claims of the United States

No. M–118

THOMAS C. EDWARDS, PLAINTIFF

v.

THE UNITED STATES, DEFENDANT

Certificate

Mr. M. Walton Hendry appeared for the plaintiff.

Mr. Charles B. Rugg, Assistant Attorney General, and Bradley B. Gilman and Erwin N. Griswold appeared for the defendant

Before Chief Justice Booth, Judge Green, Judge Littleton, Judge Williams, Judge Whaley.

Statement of case

The Court of Claims of the United States hereby certifies that the record in the above-entitled case now pending before it discloses the following:

Thomas C. Edwards duly filed his petition in the Court of Claims on the 16th day of April, 1931, praying judgment against the United States for $13,250, as will more fully appear from the petition, a copy of which accompanies this certificate as Exhibit A.

The plaintiff contends that private bill No. 510 of the 71st Congress (46 Stat. 2163), entitled "An act for the relief of Thomas C. Edwards," having been approved by the President became a
2 law under section 7, Article I, of the Constitution, notwithstanding the fact that he approved the bill March 5, 1931, that is to say, subsequent to the final adjournment of the Congress which passed it, but within ten days (Sundays excepted) after it was presented to him.

The defendant contends that this suit is on a contract, and that from the petition it appears that the cause of action, if any, accrued more than six years before the petition was filed in the Court of Claims, and that the court is consequently without jurisdiction because of the provisions of section 156 of the Judicial Code, unless jurisdiction is conferred on the court by a bill which was passed by both Houses of Congress during the third session of the 71st Congress and signed by the President on March 5, 1931, after the final adjournment of the Congress which passed the bill.

In order that we may determine whether we have jurisdiction, we respectfully request an answer to the following question, a decision on which is deemed indispensable to a proper disposition of the cause now before us.

Question certified

QUESTION: Did the act of March 5, 1931 (46 Stat. 2163), become law when it was approved by the President on March 5, 1931, after

the final adjournment on March 4, 1931, of the Congress which had passed it?

It is respectfully requested that the Supreme Court of the United States give appropriate instructions on the above question, certify and transmit the same to the Court of Claims of the United
3 States for its guidance in the further progress of the cause.

FENTON W. BOOTH, *Chief Justice*,
WILLIAM R. GREEN, *Judge*,
BENJAMIN H. LITTLETON, *Judge*,
THOMAS S. WILLIAMS, *Judge*,
RICHARD S. WHALEY, *Judge*.

The Judges who sat on the hearing of the case.

4 *Exhibit A to certificate*

In Court of Claims of the United States

No. M–118

THOMAS C. EDWARDS, PLAINTIFF
vs.
THE UNITED STATES, DEFENDANT

PETITION

Filed April 16, 1931

To the Honorable Court of Claims:

The petition of Thomas C. Edwards respectfully represents:

That he is a citizen of the United States, with his principal place of business at Alvin, Texas, and brings this suit pursuant to act of Congress approved March 5, 1931, reading as follows:

"PRIVATE—No. 510—71ST CONGRESS
"An act for the relief of Thomas C. Edwards

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the claim of Thomas C. Edwards growing out of losses suffered under contracts of June 13, 1917, for delivering hay to the Quarter
5 master Corps, Fort Sam Houston, Texas, is hereby referred to the United States Court of Claims with jurisdiction to hear the same to judgment and with instructions to adjudicate the same upon the basis of the losses suffered due to conditions arising out of the late war, to the cancellation of orders given by the Government for the delivery of the hay, and the encountering of a severe drought."

Approved March 5, 1931.

That under date of June 13, 1917, plaintiff entered into a contract with the United States for delivering hay to the Quartermaster

Corps, Fort Sam Houston, Texas, and other points where directed by said contract, copy of which contract is hereto attached, made a part hereof and marked "Plaintiff's Exhibit No. 1."

That in accordance with the terms of said contract the contracting officer for the defendant under date of June 19, 1917, issued a written call upon plaintiff, known as call No. 26, for the delivery of 1,324,000 pounds of hay, delivery to begin July 1, 1917, as specified in said contract, and likewise under date of June 20, 1917, issued call No. 27 for 1,420,000 pounds to be delivered three cars daily "commencing July 1, 1917." Upon receipt of said calls plaintiff immediately made preparations for delivery of all hay required amounting to six carloads per day as specified, and actually had a portion of the cars loaded on the track ready for delivery when the defendant wired the plaintiff June 25, 1917, cancelling said calls and directing that no deliveries be made until July 15, or fifteen days subsequent to the date required in the contract for beginning
6 deliveries. The plaintiff was thereupon forced to cancel the arrangements which he had made for securing the hay and before he was able to make new purchases a severe drought set in over that portion of the country from which he expected to get the hay.

By reason of the cancellation of said orders, a severe drought in that portion of the country from which plaintiff expected to get the hay to fill said contract and war conditions then existing plaintiff suffered the following losses:

Item 1. Difference between the actual cost of the hay delivered by plaintiff under said contract and the amount received therefor from the defendtnt	$5,476.20
Item 2. Difference between the price plaintiff could have bought the said hay but for said conditions and the actual cost to plaintiff	5,768.80
Item 3. Additional expenses and losses incurred under said contract, as follows:	
Automobile repairs and gas	275.00
Two men, hay buyers, salary	600.00
Expenses of traveling for the above two hay buyers	480.00
Telegrams, phones, stationery, and postage	150.00
Overhead, including bookkeeper, stenographer, and manager's time	500.00
Making a total loss of	13,250.00

7 due to the causes specified in the aforesaid act of Congress.

That the plaintiff is the sole owner of this claim and is the only party interested therein, and no assignment or transfer of this claim, or any part thereof or interest therein, has been made.

That the plaintiff has at all times borne true allegiance to the United States, and is justly entitled to the amount claimed from the United States, after allowing all just credits and setoffs.

Wherefore, plaintiff prays that the court may find that he is entitled to the sum of $13,250.00, and that judgment be entered against the United States for the total sum of $13,250.00; that the

court may grant such other relief as the nature of the case may require, or the Court may deem proper.

THOMAS C. EDWARDS,
By M. WALTON HENDRY,
Attorney in Fact.

[*Duly sworn to by M. Walton Hendry; jurat omitted in printing.*]

8 EXHIBIT NO. 1 TO PETITION

CONTRACT FOR SUPPLIES

(To be used for all purchases of supplies, fuel, forage, subsistence, etc.)

Between Captain S. B. Belden, Quartermaster Corps, U. S. ~~A.~~ R., and Thos. C. Edwards, Alvin, Texas, for prairie feeding and bedding hay required at Ft. Sam Houston and Aviation, Texas, and other camps and stations in the eastern district.

Date of contract: June 13, 1917; contract expires September 30, 1917.

Sureties: The Hartford Accident and Indemnity Company, $11,000.00.

Appropriation and amount: S. S. & T., Q. M. C., f. y. 1918, $41,700.00.

These articles of agreement entered into this 13th day of June, nineteen hundred and seventeen, between Captain S. B. Belden, Reserve Quartermaster Corps, United States ~~Army,~~ of the first part, for and in behalf of the United States of America, and Thos. C. Edwards (a corporation existing under the laws of the State of ------), of Alvin, in the county of Brazoria, and State of Texas (hereinafter designated as contractor), of the second part, WITNESS: That the said parties do hereby mutually covenant and agree to and with each other—referring to any advertisement, circular to bidders, and specifications hereto attached or referred to herein, or pertaining hereto, and to samples referred to herein or in said advertisement, circular to bidders, or specifications, which, so far as they are applicable, form a part of this contract—as follows:

9

1. That the said contractor shall furnish and deliver during the period commencing July 1, 1917, and ending September 30, 1917, the following supplies for or at the military stations, in the manner and at the prices stated in this contract; deliveries to be made in such quantities, at such times, and in such bins, sheds, bunkers, or other places of storage at the military stations named, as may be required by the receiving officer or agent of the Quartermaster Corps, unless the minimum quantities to be delivered are stated, or different conditions as to place and time of delivery are expressly set forth in this contract, viz:

F. o. b. cars Ft. Sam Houston and Aviation, Texas, three million (3,000,000) pounds, new crop, prairie feeding hay equal to sample submitted at fifty-eight and a quarter cents (.5825), and two million five hundred thousand (2,500,000) pounds at sixty-five and one-half cents (.655) per one hundred pounds.

Also six hundred and fifty thousand (650,000) pounds for delivery f. o. b. cars other stations in the eastern district at seventy and a half cents (.705) per one hundred pounds, except at Corpus Christi and Kingsville, at which points the price shall be sixty-five and one-half cents (.655) per one hundred pounds.

Also seven hundred thousand (700,000) pounds of prairie bedding hay, f. o. b. cars nearest railroad stations to camps and stations in the eastern district at fifty-one and a half cents (.515) per one hundred pounds, except at Corpus Christi and Kingsville, Texas, at which points the price shall be forty-six and one-half cents (.465) per one hundred pounds.

All the above subject to inspection and acceptance at points of consumption.

2. That it is mutually agreed and understood between the said parties that the separate quantities of supplies to be delivered under this contract may be increased or decreased at the option of the United States, at any time or times during the continuance of the contract, not exceeding the percentages thereof indicated in the circular to bidders hereto attached; and further, if during the period of the contract the troops or garrison be withdrawn, in whole or in part, from the post or station, the number of animals thereat reduced, an electric light plant installed thereat, or other radical change in the service be made, on account of which the supplies, or any portion thereof, will not be required, quantities to be delivered under this contract may be modified accordingly. In case of change in quantity required, by increase or decrease, notice in writing of such change will be served upon the contractor by the contracting officer.

3. That for and in consideration of the faithful performance of the stipulations of this contract, the contractor shall be paid, at the office of the contracting officer, or by a disbursing officer designated by him to make payments, the prices stipulated in this contract for those supplies delivered and accepted. Payments to be made monthly, as a rule, if practicable, unless otherwise provided in this contract, or in the circular to bidders hereto attached, or as soon after the acceptance of each delivery as is practicable and funds on hand for the purpose will admit.

4. That in the performance of this contract the said contractor shall not, directly or indirectly, employ any person undergoing sentence of imprisonment at hard labor which may have been imposed by a court of any State, Territory, or municipality, having criminal jurisdiction, nor permit such employment by any person furnishing labor or materials to said contractor for use in the fulfillment of this contract.

5. That it is expressly agreed and understood that this contract shall be noneffective until an appropriation adequate to its fulfillment is granted by Congress and is available, except in so far as is necessary to provide for the necessities of the service as authorized by section 3732 of the Revised Statutes of the United States. However, in order to provide for the necessities of the service as authorized by section 3732 of the Revised Statutes of the United States, it is agreed that the supplies specified herein, so far as authorized by said section, shall be delivered at the times and manner required under this contract, and that payments for the supplies so delivered and accepted shall be made as soon as it is practicable after funds are available under appropriations therefor by Congress.

6. That in case of the failure of the contractor to perform any part of this contract, the contracting officer, or his successor, shall have the right to supply the deficiency by procurement in open market, or otherwise, purchasing any of the supplies so required
12 at such place as he may elect, with a view to obtaining the same promptly and at the same time endeavoring to secure fair and reasonable prices (the articles procured to be the kind herein specified, as nearly as practicable), at the expense of the contractor; and in case failure should occur prior to the time fixed for performance of all parts of the contract the right is hereby reserved to the United States to elect whether the contractor shall be permitted to continue performance as to such remaining part (deficiency by reason of any further failure to be supplied as above) or whether the entire unperformed part shall be procured at the expense of the contractor. In event, however, of the granting of additional time for performance, the cost of inspection and other expenses and damages to the United States over what would have been incurred had performance been accomplished by the time originally fixed therefor, if any, except in so far as the same may arise from delays for which the United States is responsible, as determined in each of those particulars by the officer in charge or higher authority, shall be charged to the contractor and may be deducted from any money due or to become due said contractor from the United States: Provided, That where additional time has been granted, the United States shall also have the right to cause the remaining part of the contract, or any portion thereof, to be taken from the contractor whenever, in the opinion of the officer in charge, reasonable and satisfactory progress is not being made, and to secure completion of the contract at the expense of the contractor, including charges as above on account of delays.

13 7. That the contractor shall hold and save the United States, and all officers and agents thereof, harmless from and against all demands of any nature or kind for or on account of the use of any patented article, combination, or process which may affect the supplies delivered under this contract.

8. That neither this contract nor any interest therein shall be transferred to any other party or parties, and in case of such

transfer the United States may refuse to carry out this contract either with the transferor or the transferee, but all rights of action for any breach of this contract by said contractor are reserved to the United States.

9. That no Member of or Delegate to Congress, or Resident Commissioner, nor any person belonging to or employed in the military service of the United States is, or shall be, admitted to any share or part of this contract, or to any benefit which may arise herefrom, but, under the provisions of section 116 of the act of Congress approved March 4, 1909 (35 Stats. L. 1088), this stipulation, so far as it relates to Members of or Delegates to Congress or Resident Commissioners, shall not extend, or be construed to extend, to any contract made with an incorporated company for its general benefit.

10. That the following changes or alterations were made in this contract before it was signed by the contracting parties, viz: Article 11 deleted, also letter "A" in first line of brief changed to letter "R," and word "Army" in third line of preamble changed to word "Reserve."

11. ~~That this contract shall be subject to the approva of the and such approval when given shall relate back and be construed as operative from the date specified in this contract as the date of its execution, and the rights of the parties shall be determined accordingly.~~

In witness whereof, the parties aforesaid have hereunto placed their hands the date first hereinbefore written, and the contracting officer hereby certifies that if the contractor is a corporation that said officer has satisfied himself of the authority of the person signing the contractor's name to bind the contractor and has waived the requirements of Army Regulations as to the filing of written evidence of said authority.

Witnesses:

JOHN W. ELLIOT as to S. B. BELDEN,
Captain Quartermaster Corps,
U. S. R.

A. BREYER as to THOS. C. EDWARDS

(Executed in triplicate)

PROPOSALS FOR FUEL, FORAGE, BEDDING, GASOLINE, MINERAL OIL, AND FUEL OIL

WAR DEPARTMENT,
HEADQUARTERS SOUTHERN DEPARTMENT,
OFFICE OF DEPARTMENT QUARTERMASTER,
Fort Sam Houston, Texas, May 15, 1917.

1. The following is a copy of an advertisement issued from this office and published in newspapers:

2. Office Department Quartermaster, Fort Sam Houston, Texas.

Sealed proposals will be received here until 11.00 a. m., June 5, 1917, for furnishing wood, smithing coal, gasoline, mineral oil, crude oil, distillate, forage, and bedding required at Southern Department stations and camps, during the period beginning July 1, 1917, and ending September 30, 1917. Information furnished upon application.

3. Proposals will be received and opened at this office at 11.00 o'clock a. m., June 5, 1917. Proposals will not be received at camps or stations.

4. One copy of these specifications should be securely attached to each copy of proposal, and be mentioned therein as comprising a part of it.

5. Proposals are required in triplicate. Envelopes containing proposals should be marked to show stations and camps bid upon, kind of supplies and date of opening.

6. It is preferred that proposals specify delivery at stations and camps, where supplies are required (but under paragraph 38, hereof, alternate proposals may be made for delivery f. o. b. cars at points other than the stations and camps.

7. It is intended to provide a three months' supply of forage and bedding for all public and private animals in the hands of troops along the Mexican frontier, gasoline for all motor-propelled vehicles with troops during the same period, mineral oil for illuminating and fuel purposes, wood and smithing coal. On account of frequent and unforseen changes among the troops on the border, it is
16 impracticable to state the specific quantities of each kind of these supplies that will be required at the various stations between Brownsville, Texas, and Yuma, Arizona. The border has been divided into two districts, viz: "The eastern district," covering all stations between Brownsville, Texas, and Mafeta, Texas, inclusive, and in addition thereto, Fort Sam Houston, Aviation Post, and Corpus Christi, Texas: "the western district," covering all stations between Mafeta, Texas, and Yuma, Arizona, inclusive, and in addition thereto, Deming, N. M., and remount station, Ft. Bliss, Texas, and bidders are requested to submit separate and distinct bids for each district.

8. A proposal may include all stations and camps in a district at a uniform price, or may provide for delivery at any of the border stations and camps as given below, or f. o. b. cars at the R. R. stations nearest thereto, at specific rates. Bidders may limit the quantities of supplies they will furnish, or bid on unlimited quantities, with the understanding that the total amounts mentioned in par. 10 below, as estimated quantities, will not be exceeded, but it will be understood and so stated in contracts, that the Government reserves the right to increase or diminish by 20% any quantities, specifically contracted for and that if troops or animals are withdrawn in whole or in part from any camp or station for which contract for specific quantities has been executed, undelivered quantities may at the option of the

Government be ordered delivered elsewhere, and the difference in freight rates, if any, between point of original shipment, contract point of delivery, and ultimate destination, adjusted in settlement for such supplies. In cases of increase or decrease written notice
17 of such change will be served upon the contractor by the department quartermaster, or other contracting officer, or their authorized representative.

9. Attention of bidders is invited to the fact that the requirements of the Government are specifically set forth herein. Any bid containing propositions or conditions in conflict with these requirements will not be considered. Proposals limiting time of acceptance and award to any period less than twenty-five (25) days, or that would, in any way take the control of awards and deliveries as to time and quantities, out of the hands of the Government, will be rejected. Once a proposal has been submitted by a bidder, it can not be modified, neither can it be withdrawn, until reached at the time of opening. (See paragraph 16.) If a bidder desires to change his proposal after having submitted same, he should submit a new bid, complete in form, and show thereon that it is to take the place of the one already submitted and which it is desired to withdraw from reading. No telegraphic bids will be considered, nor requests for changes in bids entertained.

10. The total quantities of fuel forage, gasoline, and mineral oil estimated to be required each month are as follows:

EASTERN DISTRICT

Oats	11,000,000 pounds.
Hay	9,000,000 pounds.
Bedding	700,000 pounds.
Gasoline	95,000 gallons.
Mineral oil, illuminating	7,000 gallons.
Mineral oil, fuel	25,000 gallons.
Distillate	100,000 gallons.
18 Crude oil	15,000 gallons.
Wood, hard (border stations only)	18,000 cords.
Smithing coal	60,000 pounds.

WESTERN DISTRICT

Oats	8,500 000 pounds.
Hay	10,900,000 pounds.
Bedding	1,950,000 pounds.
Gasoline	84,000 gallons.
Mineral oil, illuminating	13,500 gallons.
Distillate	25,000 gallons.
Wood, hard	6,575 cords.
Smithing coal	52,500 pounds.

11. The following stations and camps are now garrisoned by troops, for whom these supplies are required:

EASTERN DISTRICT

Brownsville, Texas.
Harlingen, Texas.
Mercedes, Texas.
Llano Grande, Texas.
Rabb's ranch, Texas (Santa Maria).
Donna, Texas.
Pharr, Texas.
San Benito, Texas.

EASTERN DISTRICT—Continued

Kingsville, Texas.
Fort Ringgold, Rio Grande, Texas (Sam Fordyce).
Sam Fordyce, Texas.
Corpus Christi, Texas.
McAllen, Texas.
Mission, Texas.
Laredo, Texas.
Dolores, Texas.
Eagle Pass, Texas.
Del Rio, Texas.
Aviation Post, Texas.
Camp at Fort Sam Houston, Texas.
Leon Springs Target and Maneuver Reservation, Leon Spring, Texas.

19 WESTERN DISTRICT

Marfa, Texas.
Presidio, Texas.
Ruidosa, Texas.
Everett's ranch, Texas.
Sierra Blanca, Texas.
Boquillas, Texas.
Lobo, Texas.
Marathon, Texas.
Terlingua, Texas.
Glenn Springs, Texas.
Polvo, Texas.
Camp at Fort Bliss, Texas.
Fabens, Texas.
Fort Hancock, Texas.
Yaleta, Texas.
Clint, Texas.
Canutillo, Texas.
El Paso, Texas.
Las Cruces, N. M.
Mount Riley, N. M.
Hermanas, N. M.
Hachita, N. M.
Las Cienegas, N. M. (Hachita).
Deming, N. M.
Columbia, N. M.
Douglas, Arizona.
Forrest Station, Ariz.
Naco, Ariz.
Warren, Ariz.
Nogales, Ariz.
Lochiel, Ariz.
Yuma, Arizona.

12. Two sets of contracts will be made by this office; one set for the eastern district and one set for the western district; therefore a bidder who desires to submit proposals covering all stations and camps should make two sets of bids; one set to include the camps and stations of the eastern district and another set for all camps and stations of the western district.

13. In contracts to be made under this advertisement the particular kind or class or description of supplies offered by the bidder will be named specifically, followed by the words "or of equal quality," so that should a bidder offer a grade of forage grown in only one locality and the crop in this locality be a failure, he will be required to go into other markets to purchase supplies equal to the one named, to fulfill his contract.

20 14. Information with regard to supplies for which proposals are invited will be furnished upon application to all persons desiring it, but no person belonging to or employed in the military service will render assistance in preparation of proposals.

15. No person will be informed, directly or indirectly, of the name of any one intending to bid, or not to bid or to whom information in respect to proposals has been given.

16. Before the time of opening, any bidder may, without prejudice, withdraw from competition, by giving written notice of his decision to the officer holding his bid, and when his bid is reached at the opening it will be returned to him or his authorized agent, unread.

Specifications for forage and bedding

17. Bran: To be wheat bran of the highest grade of the locality, best quality, coarse, fresh, and free from dirt and other impurities.

To be delivered in good, strong, new burlap sacks, containing about one hundred (100) pounds each; the weight of the sacks to be deducted, and the sacks to become the property of the United States.

18. Hay, feeding: To be of the highest grade of the locality. Timothy or equal preferred, best quality, properly cured, bright, natural color, moderately fine, sound, crisp, fresh, sweet smelling, the flowering heads of the grasses present, and free from weeds, sticks, dust, and other foreign matter.

21 Delivery to be made in bales. Each bale shall be secured with at least two (2) wires, not less than 16 gauge, and weigh not less than sixty-five (65) nor more than one hundred and twenty-five (125) pounds. A sample of not less than 25 lbs. of the hay which the bidder proposes to deliver, must be sent to this office, all charges prepaid, before the hour set for opening of bids. Samples to be marked so as to show the name of the bidder.

19. Oats: To be graded oats of the best quality; to be sound, well developed and well matured, bright, sweet, clean, and practically free from other grains; to test not less than thirty-two (32) pounds for unclipped and thirty-four (34) pounds for clipped to the measured bushel, and to be dry to the extent of containing not to exceed 12 per cent of moisture; bidders to specify the color of the oats bid upon.

To be delivered in good, strong, new burlap sacks, containing about one hundred and twenty-five (125) pounds each; the weight of the sacks to be deducted, and the sacks to become the property of the United States.

20. Bidders are required to state, separately, the price at which they will deliver white, black, red or mixed oats, in conformity with the above specifications; and samples or not less than one bushel each of the oats which bidders intend to deliver, i. e., white, black, red, or mixed oats, must be submitted with the proposals. These samples to show the grade of oats, which bidders propose to furnish. The samples should be properly marked with the name of the bidder and must be in this office before hour of opening of bids; all transportation charges to be prepaid.

22 21. Hay for bedding: To be prairie, wild, or other hay, good quality, properly cured, bright, natural color, moderately fine, sound, crisp, clean, fresh, sweet smelling, and free from weeds, sticks, dust, and other foreign matter.

Delivery to be made in bales. Each bale shall be secured with at least two (2) wires of not less than 16 gauge, and weigh not less than sixty-five (65) nor more than one hundred and twenty-five (125) pounds.

22. Straw: To be rye, oat, or wheat straw, of the highest recognized grade of the locality, best quality, bright, clean, dry, sound, long, properly cured, and free from chaff, thistle, weeds, and other foreign substances.

Delivery to be made in bales. Each bale will be secured with at least two (2) wires of not less than 16 gauge, and weigh not

less than sixty-five (65) nor more than one hundred and twenty-five (125) pounds.

23. Bidders may submit proppsals for delivery of hay and bedding at railroad points other than the camps and stations at which required, in which case the density of compression of the hay and bedding must be stated; the cost of transportation from place of delivery to the camps and stations will be considered in making awards.

24. As a rule, where proposals are invited for "hay (for bedding) or straw," no contract for straw will be made when the lowest bid for straw exceeds the lowest bid for hay.

25. Bids for forage and bedding should be at a specific rate per 100 pounds net.

23 Specifications for motor gasoline

26. Gasoline, motor: To be motor gasoline of first quality, at least 66° gravity, water white, clear and sweet. Where delivery is made in drums or barrels, the containers will be returned to the contractor at point of delivery on Government bill of lading, or otherwise, without expense to him.

Bidders are required to submit samples, transportation charges prepaid, of not less than one gallon of the gasoline which they propose to furnish.

Specifications for mineral oil for illuminating purposes

27. Mineral oil: Flash point must not be under 120° F. when taken in the Tagliabue closed cup. Tests to be made at point of delivery. The oil delivered in accordance with these specifications must be best refined "water white" mineral oil (kerosene) acid-free, and practically sulphur free. It must burn in suitable lamps without smoking or appreciable odor, without undue incrustation of the wick, and without any very appreciable diminution in illuminating power after long, continued burning.

The illuminating power of the oil must be equal to that of the best grades of kerosene. All illuminating oil to be delivered in cans and cases.

24 Specifications for mineral oil for fuel purposes

28. To be of best quality, and to be water white color, or flash point not under 115 degrees Fahrenheit.

Bidders will be required to submit samples, transportation charges prepaid, of not less than one (1) quart of the oil which they purpose to furnish. These samples will be submitted to this office in time to permit of test being made prior to opening of bids.

Specifications for distillate

29. Distillate: To be No. 1 engine distillate, 52–54 degrees gravity, pure, and of best quality.

Specifications for crude oil

30. Oil, crude: Must have a gravity of not less than 14 degrees Baumé at a temperature of 60 Fahrenheit.

Specifications for cans, cases, barrels, and drums

31. Cans: Each can to be of five (5) gallons capacity, made throughout of tin, strictly first quality for the purpose required, top to be equipped with closed screw cap, and can to be suitable in every respect to insure safe transportation, and storage of gasoline and mineral oil without waste.

32. Cases: Cases to contain two (2) cans each, and be made of suitable lumber, dressed on outside, and sufficiently strong to insure safe transportation and storage of gasoline and mineral oil without waste.

33. Barrels and drums: Barrels and drums to be of about fifty (50) gallons capacity each, made of first-class material throughout, suitable to insure safe transportation and storage of gasoline and mineral oil without waste.

34. Bulk: When delivered in bulk, the contractor will be required to deliver the gasoline and mineral oil into storage tanks, (provided by the Government) where located.

Specifications for wood

35. Wood: To be sound, dry, not burned or charred, free from small limbs and brush, sawed or cut in four foot lengths and split to convenient size, but not exceeding six inches in diameter.

Delivery will be made in such quantities and at such times, and be properly piled in such wood yards, or other places of storage as may be required by the receiving officer or agent of the Quartermaster Corps.

The following will be considered hard wood: Ash, cypress, elm, hickory, locust, maple, oak, walnut, chestnut, white beech, American horse bean, mountain laurel, swamp whortle, mesquite, etc.

The following will be considered soft wood: Cedar, fir, hemlock, pine, poplar, redwood, spruce, butternut, linden, pinnon, basswood, cottonwood, etc. Mixtures of hard and soft woods will be classed for purpose of award as soft wood.

The price for wood should be stated per cord of 128 cubic feet f. o. b. cars, stacked or otherwise. Bidders will state the kind of wood which they propose to furnish and per centage of each kind, if mixed.

Specifications for smithing coal

36. Coal, smithing: To be best quality Cumberland, or equal, suitable for heavy welding, and free from impurities and fine dust. When delivered in sacks, the sacks are to be good, strong new burlap sacks, containing about 100 pounds each, the weight of the sacks to be deducted and the sacks to become the property of the United States. Bidders should state price per 100 pounds.

General instructions

Proposals

37. As a general rule awards will be made to the lowest responsible bidders for the best and most suitable articles, beginning with the lowest in price and continuing in order until the quantity advertised for, or such part thereof as may be required, shall have been allotted; in case of tie bids the awards will be divided equally among such bidders, or if they mutually prefer, will be decided by lot.

38. It is the purpose to require delivery of the supplies in such quantities and at such time or times during the period mentioned, as may be required by the contracting or receiving officer of
27 the Quartermaster Corps. If in the opinion of a bidder, it would be to the advantage of the Government and would secure lower prices for the supplies herein referred to by making deliveries at times and places and in quantities other than those herein stated, such bidder may submit an alternate proposal for delivering the supplies under conditions as to place and time of delivery and quantities to be delivered different from those mentioned in the circular, but no proposition for the delivery at one time of greater quantities of any article than can be properly cared for will be considered.

39. The Government reserves the right to accept or reject the whole or any part of a bid.

Guaranties

40. When the value of the supplies is $500.00 or more, the proposal must be accompanied by a guaranty in due form. The guaranty is to the effect that if proposal be accepted, in whole or in any part whatsoever, within sixty days from the date of opening, the bidder will promptly enter into contract for the supplies, and if required, will furnish good and sufficient bond to secure performance of the contract, or if written contract be not required, will furnish the supplies so awarded, and that in event of failure to enter into contract and give bond, or to furnish the supplies, if written contract is waived, the guarantors will pay to the United States the amount of the loss it may sustain by reason of the default.

41. Each guarantor, when a person, must justify in a sum not less than 15 per cent of the amount involved in the proposal, but in no

case for less than $200.00. The notes at the bottom of the
28 guaranty form should be carefully complied with. The certificate of sufficiency of guarantors to be signed by a judge or clerk of a U. S. court or district attorney, etc., need not be executed in triplicate, as a single certificate on one number of the bid will suffice. When a single certificate is executed, each of the other two numbers of the proposal should contain reference to the fact that this certificate is executed on one number only.

42. Guaranty by a qualified surety company will be received in lieu of guaranty by individuals, in which case, the justification of the guaranty form may be omitted.

43. At the option of bidders, certified checks (15 per cent of the amount involved in the proposal) may be deposited in lieu of written guaranty. The conditions of the guaranty will be held to be the same. These checks will be returned to the bidders when no longer required to protect the interests of the Government. When checks are furnished, notation of the fact should be written on the proposal, giving dates, amounts, number of checks, and the name of the bank on which drawn.

44. Bids not guaranteed in accordance with the above requirements will not be considered.

Inspection

45. An inspection of the supplies at the camps or stations will be made by an officer or agent designated for the purpose. If the contractor objects, in writing, to the action of an inspector, a board of officers shall be convened at once to determine whether the supplies tendered are receivable, and its report when duly ap-
29 proved by the camp or station commander, or other competent authority shall govern. The Government shall not be responsible for supplies prior to acceptance.

Payment and retained percentages

46. Payment for supplies delivered and accepted, shall be made from time to time, monthly as a rule, and in making partial payment, when no bond is furnished (the amount involved being less than $500.00), 10 per cent of the amount of each account shall be retained until completion of the succeeding delivery called for, and then paid. In cases where a bond is furnished, no percentages will be retained.

Contracts and bonds

47. The amount of the penalty of the bond to be furnished by the successful bidder will be equal to at least 10 per cent of the full sum of the consideration of the contract.

48. A firm will not be accepted as a surety, nor will a partner be accepted as a surety for a copartner, nor for a firm of which he is a member. An officer of a corporation will not be accepted as a surety for such corporation.

49. Bonds guaranteeing contracts are not acceptable where one member of a partnership or an officer of a corporation enters into a contract in his individual name and procures other members of the partnership or other officers of the corporation to act as sureties on the bond, unless the contract is really to be performed by the individual himself and not by the partnership or corporation.

30 50. Bonds with corporate sureties are preferable in all cases. Individual bonds, however, will not be rejected.

51. In furnishing supplies required under this circular, the contractors shall not, directly or indirectly, employ any person undergoing sentence of imprisonment at hard labor which may have been imposed by a court of any State, Territory or municipality having criminal jurisdiction, nor permit such employment by any person furnishing labor or materials to contractors.

52. The contracts will provide that in case of failure of the contractors to comply with the stipulations of their contracts the Government may supply any deficiencies by purchase in open market or otherwise, and the said contractors shall be charged with all expenses resulting from such failure.

53. STRICT CONSTRUCTION OF TIME PERIODS IN CONTRACTS.—The Secretary of War has directed that the especial attention of all contractors, at the time of signing contracts, be called to the fact that it is the purpose of the War Department to exact a fulfillment of all contracts as to the time periods, and that they should understand when entering into contracts with this department that they need not do so with the expectation that they can be relieved from those conditions.

54. As soon as possible after bids are opened and examined, they will be submitted to the department commander, with recommendation that contracts be awarded to the lowest responsible bidders for the best and most suitable articles. Every effort will be made

31 to expedite action, so that successful bidders may be informed without unnecessary delay of the result of their proposals. To insure prompt awards, bidders are requested to exercise due care in the preparation of their proposals in order that they may be complete in every particular.

55. Attention is invited to notes printed upon the blank form of the proposal, which should be carefully considered.

56. Bidders or their representatives are invited to be present at the opening of the proposals.

57. Preference will be given to articles of domestic production and manufacture, conditions of quality and price (including in the price of foreign productions and manufacture the duty thereon) being equal, and such preference will be given to articles of American

production and manufacture produced on the Pacific coast to the extent of consumption required by the public service there.

H. L. ROGERS,
Colonel, Q. M. Corps,
Department Quartermaster.

Filed April 16, 1931, Court of Claims. A true copy. Test this March 11, 1932.

[SEAL.]

F. C. KLEINSCHMIDT,
Assistant Clerk, Court of Claims.

[Indorsement on cover:] Enter. Attorney General. File No. 36604. Court of Claims. Term No. 790. Thomas C. Edwards *vs.* The United States. Certificate. Filed March 11, 1932. File No. 36604.

U. S. GOVERNMENT PRINTING OFFICE: 1932

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No. 790

In the Supreme Court of the United States

OCTOBER TERM, 1931

THOMAS C. EDWARDS, PLAINTIFF

v.

THE UNITED STATES

ON CERTIFICATE FROM THE UNITED STATES COURT OF CLAIMS

JOINT MOTION TO ADVANCE

In the Supreme Court of the United States

OCTOBER TERM, 1931

No. 790

THOMAS C. EDWARDS, PLAINTIFF

v.

THE UNITED STATES

ON CERTIFICATE FROM THE UNITED STATES COURT OF CLAIMS

JOINT MOTION TO ADVANCE

Now comes the Solicitor General and moves the Court to advance the above-entitled cause for hearing at the earliest date convenient to the Court.

The case is before the Court on certificate from the United States Court of Claims filed March 11, 1932.

The question involved is whether a Special Act of Congress became a law when it was approved by the President on March 5, 1931, after the final adjournment of the Congress which had passed it.

The case presents an important question of constitutional law which has not been previously decided by any court. It is highly desirable that the

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executive branch of the Government secure an authoritative ruling upon this question so that the validity of the several Acts of the Seventy-First Congress approved by the President after March 4, 1931, may be determined. It is desirable that this question be determined before the end of the term so that the validity of laws enacted by Congress and approved by the President may be determined without delay.

Respectfully submitted.

THOMAS D. THACHER,
Solicitor General.

Counsel for the plaintiff joins in this motion.

M. WALTON HENDRY,
Attorney for Plaintiff.

MARCH, 1932.

U. S. GOVERNMENT PRINTING OFFICE: 1932